REMARKS

Claims 1-44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 103(a) Rejection:

The Examiner rejected claims 1-44 under 35 U.S.C. § 103(a) as being unpatentable over Lustig et al. (U.S. Publication 2002/0002531) (hereinafter "Lustig") in view of Seymour et al. (U.S. Patent 6,871,190) (hereinafter "Seymour"). Applicant respectfully traverses this rejection for at least the following reasons.

Regarding claim 1, Lustig in view of Seymour fails to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and rejecting one or more offers, based on the *default purchasing standards*. Lustig teaches a system for facilitating a transaction that includes providing a better offer, when a better offer is available, to a user that desires to accept an original offer unless a better offer is available. Lustig teaches comparing the original offer to other available offers to determine whether a better offer is available and accepting the better offer, if available, on behalf of the user. However, Lustig makes no mention of information indicating default purchasing standards for the purchaser. Nor does Lustig teach or suggest anything regarding rejecting offers based on the default purchasing standards.

Seymour teaches an interactive system for conducting auctions over a communications network. In Seymour's system a bidder site that includes a bidding strategy generator for generating specific bidding strategies for auctions based on user input. Seymour's system also includes a seller site that includes a selling strategy generator for generating specific selling strategies for auctions based on user input. Additionally, bidder and seller agents are created to implement the specific bidding and selling strategies. Seymour's bidder and seller agents then conduct automated auctions

on behalf of the users. Like Lustig, Seymour fails to teach or suggest anything regarding information indicating default purchasing standards for the purchaser or about rejecting offers based on the default purchasing standards.

In the Response to Arguments, the Examiner cites paragraphs [0070-0073] of Lustig and refers to the fact that in Lustig's system, a user may connect to a publisher's web site to submit an original offer. The Examiner also relies on the fact that Lustig's system accepts the better of the user's original offer and other offers. Thus, the Examiner's position is that a user selecting an original offer in Lustig's system equates to receiving information indicating default purchasing standards for a purchaser using an Internet web site to purchase a product or service, as recited in Applicants' claims. However, a user-selected offer to purchase an item is not the same as receiving *default purchasing standards*. Furthermore, in the cited passage, Lustig teaches that his system provides a web page including a plurality offers to the user for selection. Presenting plurality of purchase offers from which a user selects an offer "in which the user is interested" (Lustig, para. [0070] does not equate to, nor teach or suggest – even if combined with Seymour, *receiving information indicating default purchasing standards*, as recited in claim 1. Receiving information indicating that a user is *interested* in a *particular* offer, as taught by Lustig, is not the same as receiving information indicating *default purchasing standards* which are used in rejecting other offers. The Examiner has erroneously equated user selection of a particular offer with receiving *default purchasing standards*. An offer is clearly not the same as default purchasing standards. No one of ordinary skill in the art would conflate the initial offer in Lustig with default purchasing standards as recited in Applicant's claim 1.

Lustig even in light of Seymour does not teach that a user selecting an offer of interest has anything to do with default purchasing standards. Nor does Lustig, even in view of Seymour, teach that a user selected offers are used as default purchasing standards.

Therefore, Lustig and Seymour, whether considered singly or in combination, clearly fail to teach or suggest receiving information indicating one or more default purchasing standards for a purchaser using an Internet web site to purchase a product or service; and rejecting one or more offers, based on the default purchasing standards. The rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 14 and 28.

Regarding claim 29, Lustig in view of Seymour fail to teach or suggest that if a better price is found before the predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and **charging the purchaser a new price between the particular price and the better price**. The Examiner does not provide a proper rejection of claim 29. The Examiner merely states that claims "29 – 40 contain similar limitations found in claims 1-13 above, therefore [claims 29 – 40] are rejected by the same rational." However, none of claims 1-13, nor the rejection of those claims, mentions anything regarding purchasing an item or service for a purchaser at a better price and charging the purchaser a new price between the particular price and the better price. The Examiner has improperly failed to consider the specific limitations of claim 29. Thus, the Examiner has failed to provide a proper rejection of claim 29.

As noted above, Lustig in view of Seymour fails to teach or suggest purchasing the particular item or service for the purchaser at the better price and **charging the purchaser a new price between the particular price and the better price.** Lustig's system teaches only that the best offer found is accepted on behalf of the user. Nowhere does Lustig mention purchasing an item or service at a better price and charging the purchaser a new price between the particular price and the better price. Similarly, Seymour is silent regarding this limitation of claim 29. Seymour's automated auction system allows buyers and sellers to configured specific auction strategies that are implemented by bidder and seller agents. Nothing in Seymour's teaches or suggests purchasing the particular item or service for the purchaser at the better price and charging

the purchaser a new price between the particular price and the better price. Additionally, there is nothing about the Examiner's combination of Lustig and Seymour that teaches or suggest this limitation of claim 29.

In the response to arguments, the Examiner, without citing any portion of Lustig or Seymour in support, refers to the fact that Lustig's system may accept a better offer (than the user's originally selected offer) on behalf of the user. The Examiner then asserts, "Lustig obviously teaches purchasing the particular item [or] service for the purchaser that [at] the better price and charging the purchaser a new price between the particular price and the better." However, the Examiner's assertion merely reflects the Examiner own opinion and speculation regarding the workings of Lustig's system. Nowhere does Lustig, even if viewed in light of Seymour, teach anything regarding purchasing the item for the purchaser at the better price and charging the purchaser a new price between the particular price and the better price. In fact, the very wording used by Lustig seems to teach away from charging the user a new price between price of Lustig's original offer and the price of a better offer. As admitted by the Examiner, Lustig teaches that his system, "accepts the better offer on behalf of the User" (para. 9, 15, 25, 19 and 81). Accepting a better offer *on behalf of the user* clearly implies that the better offer, and hence the cost or price of the better offer, is accepted by Lustig's system for the user. In contrast, Applicants' claim specifically recites charging the purchaser a new price between the particular price and the better price. Therefore, Lustig's system does not necessarily or inherently include charging the user a price **between the original price and the better price**.

Therefore, the rejection of claim 29 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 40, 41, 42, and 44.

In further regard to claim 41, Lustig in view of Seymour fails to teach or suggest intercepting a message over the Internet to delay the purchase for a predetermined amount of time, wherein the message includes commitment to purchase information for the purchaser regarding the item or service. Lustig's system includes receiving

information describing an offer presented to a user and receiving an indication that the user desires to accept the offer unless a better offer is available. However, Lustig teaches that "receiving the offer and receiving the indication are as a result of a singular action by the user" (Lustig, paragraph 13). For example, Lustig describes the user clicking a button, generating a sound, pressing a keyboard key, using a remote control, or selecting web page object.

Additionally, Seymour's automated auction system also fails to teach or suggest intercepting a message over the Internet that includes commitment to purchase information. Thus, Seymour fails to overcome Lustig's lack of teaching this limitation of claim 41. Thus, Lustig, even if combined with Seymour, clearly does not teach or suggest intercepting a message including commitment to purchase information over the Internet to delay the purchase for a predetermined amount of time, as recited in claim 41.

The Examiner admits that Lustig and Seymour doe not teach intercepting a message over the Internet that includes a commitment to purchase information for the purchaser regarding the item or service. The Examiner asserts that intercepting such a message of the Internet is "well known in the art" and that it would have been obvious "to modify Lustig's [system] in combining (sic) with Seymour … for the purpose of providing more efficiency and convenient in communication over the Internet."

Firstly, the Examiner's assertion that intercepting a message over the Internet, where the message includes commitment to purchase is well known fails is merely the Examiner's opinion. Applicant traverses the Examiner's statement of what is well known in the art. The Examiner hasn't cited any prior art that supports the Examiner's contention that it is obvious to intercept a message over the Internet where the message includes commitment to purchase information. M.P.E.P. 2144.03A clearly states, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based." That is precisely the case here. The Examiner has merely stated that it is "well known in the art" to intercept a message over the Internet where the message includes commit to

purchase information. The Examiner's assertion is the "principal evidence" upon which the rejection of claim 41 is based. Thus, the Examiner has not provided a prima facie rejection of claim 41.

Additionally, the Examiner's rejection does not take into account the full and complete language of Applicants' claim. The Examiner's rejection does not address the fact that claim 41 recites intercepting a message over the Internet *to delay the purchase for a predetermined amount of time*. Lustig and Seymour, as admitted by the Examiner do not mention anything regarding intercepting a message over the Internet to delay the purchase for a predetermined amount of time. The Examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for a predetermined amount of time. The Examiner's combination of cited art thus fails to teach or suggest all claim limitations. M.P.EP. §2143.03 clearly states that all claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness. Therefore, the Examiner has failed to provide a *prima facie* rejection of claim 41.

Additionally, the Examiner has failed to provide a proper motivation or suggestion for modifying Lustig in view of Seymour. The Examiner stated motivation, "for the purpose of providing more efficiency and convenient (sic) in communication over the Internet" has nothing to do with intercepting a message over the Internet, where the message includes commitment to purchase information. Intercepting messages over the Internet does not improve the efficiency and convenience of Internet communication, as suggested by the Examiner. The Examiner has stated a general goal of improving the efficiency of Internet communication, but has clearly failed to provide any suggestion or motivation for modifying the combination of Lustig and Seymour to include intercepting a message over the Internet to delay the purchase for a predetermined amount of time, where the message includes commitment to purchase information for the purchaser regarding the item or service. One seeking to "provide more efficiency and convenience in Internet communication would not be motivated to modify the combination of Lustig and Seymour to include intercepting a message over the Internet to delay a purchase for a

predetermined amount of time, where the message includes commitment to purchase information.

For at least the reasons above, the rejection of claim 41 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claim 42.

Further regarding claim 44, Lustig in view of Seymour fails to teach or suggest a plurality of broker-agent programs performing multiple searches in parallel for the better price. Lustig's system involves a matching engine and a matching program 260 that "performs the matching process, in which the matching program 260 accesses the available offer information in the matching database 270, compares the available offer information with the original offer information to determine whether the better offer is available" (Lustig, paragraph 78). Lustig further teaches that the matching program "in coordination with a matching database 270 organizes, stores, and retrieves information that describes a plurality of available offers made by one or more product vendors to buy and/or sell products" (Lustig, paragraph 56). Nowhere does Lustig mention anything regarding performing multiple searches in parallel for the better price.

Seymour also fails to describe a plurality of broker-agent programs performing multiple searches in parallel for the better price. Moreover, there is nothing about the Examiner's suggested combination of Lustig and Seymour that teaches or suggests this limitation of claim 44. Thus, Lustig, whether considered alone or in combination with Seymour, fails to teach or suggest multiple broker-agent programs performing multiple searches in parallel for a better price.

In the Response to Arguments, the Examiner states, "retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price." Applicants strongly disagree. Lustig, even if combined with Seymour, does not teach a plurality of broker-agent programs performing multiple searches in parallel for the better price. The Examiner

even states that Lustig's matching program "organizes, stores, and retrieves a plurality of available offers *from a matching database*" (italics added). Thus, as admitted by the Examiner, Lustig teaches retrieving other offers from a database, a plurality of broker-agent programs performing multiple searches in parallel. Offers may be obtained in order to fill a database in numerous ways. The Examiner's contention that retrieving a plurality of offers from a database is "equivalent to" performing multiple searches in parallel is clearly unsupported by the cited art.

For at least the reasons above, the rejection of claim 44 is not supported by the cited art and removal thereof is respectfully requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection has been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00301/RCK.

Respectfully submitted,

/Robert C. Kowert/
Robert C. Kowert, Reg. #39,255
Attorney for Applicant

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: April 2, 2007